

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10665 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMJIBHAI P PARMAR

Versus

G S R T C

Appearance:

MR MUKESH H RATHOD for the Petitioner.

MR HS MUNSHAW for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/08/2001

ORAL JUDGEMENT

1. The petitioner herein was appointed as a Driver in the year 1993 after he was selected as driver by the Selection Committee of the S.T. Corporation. The petitioner, after putting in 8 years of service, was sent by the respondents for first medical examination at General Hospital, Ahmedabad and he was also examined by the Board of Referees and by letter dated 17.11.1994, the

petitioner was declared unfit for the post of driver due to defect of eye sight. Thereafter, he was served with a show cause notice dated 3.12.1994 directing him to show cause as to why his services should not be terminated since he was declared unfit and, thereafter, his services were terminated by order dated 23.1.1995. The petitioner, subsequently, requested the Department to re-categorise him as Helper and he has accordingly shown his willingness to be so re-categorised as Helper by the S.T. Corporation. The petitioner also shown his willingness to be absorbed even as a Peon.

2. It is the say of the petitioner that the petitioner was taken on time scale and accordingly, he was a permanent employee of the S.T. Corporation. It is also his say that at the time of his recruitment, no medical examination was carried out within six months from the date of his appointment, though it was required to be taken as per the settlement dated 26.2.1971. It is also his say that at the time of recruitment and confirmation, he was found physically fit and he has put in service as a driver for more than 8 years without any break. It is also his say that during the eight years of service as a Driver, he had not caused any accident and he was driving the S.T. bus satisfactorily. According to the petitioner, in view of the settlement under the Industrial Disputes Act, he should have been given the benefit of alternative post. For that purpose, he has relied upon the Settlement dated 26.2.1971. It is, therefore, prayed that the petitioner may be reinstated in service and the termination order dated 23.1.1995 may be quashed and set aside. It is also prayed that he may be absorbed either as a Helper or Peon with effect from 23.1.1995. The present Special Civil Application has been admitted and now, it has reached final hearing.

3. It was argued on behalf of the petitioner that since the petitioner was a permanent employee, the Corporation should have absorbed him either as a Peon or as a Helper. It is also submitted that at the time of his original appointment, no medical examination was taken and he had continuously served for more than 8 years and that, therefore, the termination order, on the face of it, is illegal.

4. Mr.Upadhyay, learned Advocate for the petitioner, has also relied upon the judgment of this Court dated 25th September, 1995 given in Special Civil Application No.3048 of 1995 which is annexed with the petition. The said petition was filed by a Driver of the S.T. Corporation, whose services were terminated after 25

years on the ground of defect in colour vision as well as defect in eye sight. This Court, after considering the judgment of the Supreme Court in Narendra Kumar Chandla v. State of Haryana and others, AIR 1995 SC 519, came to the conclusion that if a person is found to be unfit, he must be accommodated in some other cadre, wherein his services can be utilized. This Court accordingly set aside the termination order and the petitioner of that petition was ordered to be reinstated in service on the post of Helper / Peon in accordance with law. Mr.Upadhyay submitted that the present case is also identical and, therefore, the same benefit is required to be given to the present petitioner.

5. Mr.Munshaw, who is appearing for the S.T. Corporation, on the other hand, submitted that the petitioner has made a request for re-categorisation after termination of his services. The said request could not be considered as he was given an opportunity by way of issuance of a show cause notice dated 3rd December, 1994 and the same was not replied by the petitioner for nearly two months. It is also stated in the affidavit-in-reply in paragraph 5 that the petitioner has not availed of the opportunity which was made available to him within the prescribed time limit. However, it is not disputed that the facts of the present case are identical to the case which is decided by this Court in Special Civil Application No.3048 of 1995. In my view, the petitioner cannot be denied the said benefit simply because he had not prayed for re-categorisation at the relevant time. In fact, it was the duty of the S.T. Corporation to give the said benefit. Since the petitioner has continued in service for more than eight years, ultimately, if he was found medically unfit on the ground of defect in eye sight, in view of the Settlement which was binding between the parties, it was the duty of the S.T. Corporation to give benefit of re-categorisation by giving him appointment either as Peon or as Helper or any other Class IV post. Admittedly, the said procedure has not been followed by the S.T. Corporation in the present case and when similar issue has already been decided by this Court, of which reference is made hereinabove, the petitioner cannot be given different treatment by the S.T. Corporation and he is entitled to get the same benefit for being re-categorised as Helper or Peon. Under these circumstances, the petition is required to be allowed and it is accordingly allowed. The order of termination dated 23rd January, 1995, Annexure 'D' is quashed and set aside and the respondents are directed to continue the petitioner on the post of Helper/Peon or any other Class IV post by protecting his pay scale and

seniority. The decision of re-categorisation of the petitioner on the aforesaid line may be taken by the authorities as expeditiously as possible and preferably within a period of one month from today. Rule is accordingly made absolute with no order as to costs.

28th August, 2001 (P.B. Majmudar, J.)

(apj)